

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLANNED PARENTHOOD OF	:	CIVIL ACTION
SOUTHEASTERN PENNSYLVANIA, INC.	:	
	:	
v.	:	
	:	
HOWARD WALTON, et al.	:	NO. 95-2813

MEMORANDUM AND ORDER

FULLAM, Sr.J. FEBRUARY , 1998

By Memorandum and Order dated November 14, 1997, I held that plaintiff Planned Parenthood has standing to bring an action under the Freedom of Access to Clinic Entrances Act (“FACE”), 18 U.S.C. §248, against a group of anti-abortion protesters who obstructed access to plaintiff’s clinic on January 27, 1995. In that opinion, I noted that while plaintiff had produced a considerable amount of evidence concerning the identities and activities of the defendants on that day, defendants had adduced no evidence whatsoever, relying solely on their contention that (1) plaintiff’s evidence was insufficient to identify them or prove that they acted with intent to obstruct the clinic; and (2) that plaintiff in any event is only entitled to a single award of \$5,000 in statutory damages, and not \$5,000 per defendant. While defendants were given an opportunity to submit additional materials in connection with the parties’ respective motions for summary judgment with regard to these remaining issues, they have

chosen simply to restate their earlier arguments.

The statute provides:

**(B) Relief.**--In any action under subparagraph (a), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

18 U.S.C. §248(c)(1)(B)(emphasis added). Planned Parenthood has elected to receive statutory damages. Plaintiff believes, however, that it is entitled to \$5,000 per defendant, for a total of \$135,000; defendants contend that their actions constituted only a single “violation” for purposes of an award of statutory damages.

I note first that the subsection of the statute which authorizes the Attorney General of the United States to bring a civil action under FACE provides:

**(A) In general.**--If the Attorney General of the United States has reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section, the Attorney General may commence a civil action in any appropriate United States District Court.

**(B) Relief.**--In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, and compensatory damages to persons aggrieved as described in paragraph (1)(B). The court, to vindicate the public interest, may also assess a civil penalty against each respondent--

(i) in an amount not exceeding \$10,000 for a nonviolent physical obstruction and \$15,000 for other first violations; and

(ii) in an amount not exceeding \$15,000 for a nonviolent physical obstruction and \$25,000 for any other subsequent violations.

18 U.S.C. §248(c)(2)(emphasis added). Congress here clearly drew a distinction between an

award of “damages ... per violation” in §248(c)(1)(B) and the assessment of a “civil penalty ... against each respondent” in §248(c)(2)(B). Plaintiff contends that to consider a blockade conducted by many persons as a single “violation” for purposes of an award of statutory damages will result in individuals participating in larger protests being punished less severely than those involved in small blockades, because the damage award can be divided among more people. As the legislative history of FACE makes clear, however, this provision was included “[b]ecause damages could be difficult and expensive to prove in the situations covered by the Act (for example, the degree of trauma suffered by a woman blockaded at a clinic but not physically injured, or the terror suffered by a doctor stalked and repeatedly threatened),” H.R. Rep. No. 103-306, at 13 (1993), reprinted in 1994 U.S.C.C.A.N. 699, 710 (1994), and not as a penalty or deterrent. Of course, a plaintiff remains free to pursue “appropriate relief, including ... punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses.” 18 U.S.C. §248(c)(1)(B).

In addition to statutory damages, Planned Parenthood indeed seeks to recover punitive damages, costs and attorneys’ fees. In a case such as this, however, involving a single, non-violent protest of short duration, punitive damages are not warranted. Attorneys’ fees -- which are likely to be substantial -- and injunctive relief should provide adequate deterrence against future violations on the part of these defendants. An Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLANNED PARENTHOOD OF	:	CIVIL ACTION
SOUTHEASTERN PENNSYLVANIA, INC.	:	
	:	
v.	:	
	:	
HOWARD WALTON, et al.	:	NO. 95-2813

ORDER

AND NOW, this            day of February, 1998, IT IS ORDERED:

1. Plaintiff's motion for summary judgment is GRANTED.
2. Defendants' motion for summary judgment is DENIED.
3. Judgment is entered in favor of plaintiff and against defendants in the amount of \$5,000, plus costs and attorneys' fees in an amount to be determined.
4. It is DECLARED that defendants' activities at plaintiff's clinic located at 1144 Locust Street, Philadelphia, Pennsylvania on January 27, 1995, constituted a violation of the Freedom of Access to Clinic Entrances Act, 18 U.S.C. §248.
5. Defendants are ENJOINED from using force, the threat of force, of physical obstruction to injure, intimidate, or interfere with any person who is obtaining, has obtained, is providing, or has provided reproductive health services at or for the aforementioned

clinic, in violation of 18 U.S.C. §248.

6. Plaintiff shall submit documentation in support of their application for costs and attorneys' fees within fourteen (14) days. Defendants may respond within seven (7) days thereafter.

Sr.J.

---

Fullam,